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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JUL 02 2009
SRC 08 002 52607

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner describes herself as a "linguist orientalist" with expertise in "Persian/Farsi (Iranian) language/ history of Middle East countries/history of Iran." At the time she filed the petition, the petitioner was a visiting professor at the University of Montana, Missoula. The petitioner has since moved to New York, but the record does not reveal her current employment (if any). The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief in which she emphasizes the importance of her skills.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by

increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Commr. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We also note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the petition on July 27, 2007. The petitioner's initial submission appears to have consisted only of the Form I-140 petition and Form ETA 750B, Statement of Qualifications of Alien. The latter form indicated that the petitioner had worked as a "Professor-Iranist" (*sic*) teaching "Persian Language and History" and "Middle East Languages and History" at Kutaisi State University in the Republic of Georgia from 1991 to 2004, and as a "Professor-Linguist" teaching "Persian Language Classes" at the University of Montana from August 2004 to the filing date.

On January 11, 2008, the director instructed the petitioner to submit additional evidence to meet the guidelines set forth in *Matter of New York State Dept. of Transportation.* In response, the petitioner stated that her "knowledge and experience as the Iranian, Georgian and U.S. relationship expert, as well as Arabic culture and history expert" are important to the United States, and that she hopes "to teach Iranian language to American military servicemen or serv[ic]ewomen." These assertions address the intrinsic merit of her occupation rather than her own standing or contributions in the field.

The petitioner submitted five witness letters. [redacted], Rector of the Tbilisi Institute of Asia and Africa and Dean of Oriental Studies at Kutaisi State University, stated:

> I have been consistently impressed by both [the petitioner's] attitude towards her work as a dedicated teacher of the University and as a researcher and scholar conducting political-social, cultural issues that [are] taking place in Middle-Eastern count[r]ies['] modern life.
>
> . . . [The petitioner] is [a] serious, extremely competent scholar and professional whose analys[es] and researches on Middle Eastern political and cultural, religious issues [are] based on conducting of historical sources and reflected in many articles and publications dedicated Iran's foreign policy, [and] Georgia's and Iran's historical relationships.
>
> . . . [The petitioner] has been . . . a visiting professor to The University of Montana [for the] last three academic years (2004-2007).
>
> During these years, students equally praise . . . her excellence in teaching skills and efficiency, and MCLL FEC (Department of Modern and Classical Languages and Literatures Faculty Evaluation Committee) recognizes [the petitioner's] excellent professional record for these years.

The remaining four letters are all from employees of the University of Montana. Foreign Student [redacted] stated:

> I first met [the petitioner] almost four years ago, as a student in her Persian Language class at The University of Montana. . . .
>
> I had two semesters in Persian language under [the petitioner's] instruction. . . . She was always trying to find new ways to improve our language skills and retention.
>
> During the 2005-2006 school year I studied in Tbilisi, Georgia. For a couple of months prior to my departure, [the petitioner] made time in her schedule to give me lessons in basic Georgian. When I arrived in Tbilisi, my instructors were impressed that I was already able to read and write the Georgian alphabet. Thanks to [the petitioner], I was able to travel much more easily in her country.

. . . In my opinion, [the petitioner] would be an asset to any institution she worked with, but more importantly, she is an asset to her students.

[redacted], Resident Scholar and Faculty Associate, stated:

I am pleased to write this letter for . . . my colleague in post-Soviet studies and office-partner. . . . For the duration of our three semester collaboration, circa 2006-2007, I found [the petitioner] to be a consistently serious and up-beat scholar. . . .

In addition to translating (from Farsi into Georgian) the poetic works of Sho'la, Mosib-beg and Madhush Undiladzes . . . , [the petitioner] has also published and presented broadly . . . not only [in] her native Georgia, but also the USA and Iran. Accordingly, when asked to create a panel on the post-Soviet Caucasus for the annual (2007) Central Asia Seminar) . . . , I immediately invited [the petitioner] to participate as an expert on the little-known but essential Georgian element in the creation of Safavid Iran, of which she is one of the world's few experts.

Arabic Language and Culture Lecturer [redacted] stated:

[The petitioner] has always conducted herself in a professional and scholarly manner. [The petitioner] is a gifted professor with a very personable, giving attitude and she truly believes and is dedicated to global education and understanding. . . .

Her presence with us provided a very valuable resource . . . in the areas of Persian Language, History and Geography of Iran, History of the Middle East and Islamic Civilization.

[redacted] stated:

[The petitioner] very graciously helped our Russian program in the spring of 2006 when we experienced a bit of a crisis. We hired an adjunct [professor] to teach three language courses. . . . The adjunct was struggling for numerous reasons. . . . In desperation, I asked [the petitioner] if she would be willing to provide the second-year students with a weekly "Conversation Day." Teaching Russian was not in [the petitioner's] contract. Her help was invaluable. She lifted the students' moral[e] . . . [and] also gave our adjunct both some time to catch up on grading and the peace of mind that the students were being truly challenged in their conversation skills.

The letters discussed above show that the petitioner's colleagues hold her in high regard, both in terms of her subject matter expertise and her professional conduct. The letters, however, do not establish the national scope of the petitioner's work. The petitioner's classroom instruction and faculty interactions are inherently local rather than national in scope. Some witnesses have referred to the petitioner's

publications, but the record does not contain documentation (either the publications themselves or proof of their existence) to support these assertions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

Furthermore, it cannot suffice to demonstrate that the petitioner is a skilled professional. The petitioner does not only seek classification as a member of the professions holding an advanced degree. She also seeks an additional benefit in the form of an exemption from the job offer requirement that normally applies to professionals in her field. To qualify for this added benefit, she must do more than show that she is competent and respected by her peers. She must show that it is in the national interest to waive the job offer requirement that normally applies to the classification she has chosen to seek.

The director denied the petition on August 29, 2008, stating that the petitioner failed to show that her "contributions to the field have influenced that field on such a scale that the petitioner merits the extra benefit of a national interest waiver." The director stated that the witnesses' "general statements cannot suffice" to establish eligibility.

On appeal, the petitioner states:

> It is unknown why the Service concluded that I had tried just rest on field's importance [*sic*]. Every submitted recommendation letter by independent experts had suggested that my qualification, knowledge and activities as scientist [*sic*] is not an ordinary case.
>
> Nobody tried to analyze submitted evidences and write the competent decision.

The record contains no letters from "independent experts." The witnesses have all worked with the petitioner, either at the University of Tbilisi or at the University of Montana. While the letters are very positive, and portray the petitioner as a helpful and knowledgeable scholar, the letters give no indication of the nature or extent of the petitioner's scholarly contributions to her field.

The petitioner asserts that "there is very shortage" (*sic*) of "experts in Iranian, Arabic and Georgian culture and history." Such shortages are not grounds for a waiver, because the labor certification process exists to address such shortages. *See Matter of New York State Dept. of Transportation* at 218. Furthermore, this argument only addresses the intrinsic merit of the petitioner's occupation; it does not provide any comparison between the petitioner and other qualified workers in her field. There exists no blanket waiver for "experts in Iranian, Arabic and Georgian culture and history," and therefore the petitioner's expertise in those areas does not guarantee her a national interest waiver.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than

on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This decision is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.